

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

ALBERT LAI, M.D.)

Case No. 800-2015-013709)

**Physician's and Surgeon's)
Certificate No. A86192)**

**Respondent)
_____)**

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 22, 2019.

IT IS SO ORDERED January 23, 2019.

MEDICAL BOARD OF CALIFORNIA



By: _____

**Ronald Lewis, M.D., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
4 State Bar No. 179733
California Department of Justice
5 300 South Spring Street, Suite 1702
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7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 ALBERT LAI, M.D.
72780 Country Club Drive, Suite C300
14 Rancho Mirage, California 92270

15 Physician's and Surgeon's Certificate
No. A 86192,

16 Respondent.
17

Case No. 800-2015-013709

OAH No. 2018081006

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
23 Board of California ("Board"). She brought this action solely in her official capacity and is
24 represented in this matter by Xavier Becerra, Attorney General of the State of California, by
25 Rebecca L. Smith, Deputy Attorney General.

26 2. Respondent Albert Lai, M.D. ("Respondent") is represented in this proceeding by
27 attorney Peter R. Osinoff, whose address is 355 South Grand Avenue, Suite 1750, Los Angeles,
28 California 90071.

3. On or about March 3, 2004, the Board issued Physician's and Surgeon's Certificate No. A 86192 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-013709, and will expire on March 31, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-013709 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 25, 2018. Respondent filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-013709 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-013709. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation No. 800-2015-013709 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the imposition of discipline by the Board as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (“PDF”) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND.

IT IS HEREBY ORDERED that upon completion of the following course-work, the Physician's and Surgeon's Certificate No. A 86192 issued to Respondent Albert Lai, M.D. will be Publically Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand is issued in connection with Respondent's care and treatment of Patient 1 as set forth in Accusation No. 800-2015-013709, is as follows:

///

1 In 2014, you committed acts constituting negligence in violation of Business
2 and Professions Code section 2234 in your care and treatment of Patient 1,
3 by failing to perform toxicology screening and review CURES reports while
4 managing the patient's intrathecal pump and increasing the patient's
5 morphine concentration to greater than 30 mg/ml on one occasion on July
6 17, 2014.

7 **B. PRESCRIBING PRACTICES COURSE.** Within sixty (60) calendar days of the
8 effective date of this Decision, Respondent shall enroll in a course in prescribing practices
9 approved in advance by the Board or its designee. Respondent shall provide the approved course
10 provider with any information and documents that the approved course provider may deem
11 pertinent. Respondent shall participate in and successfully complete the classroom component of
12 the course not later than six (6) months after Respondent's initial enrollment. Respondent shall
13 successfully complete any other component of the course within one (1) year of enrollment. The
14 prescribing practices course shall be at Respondent's expense and shall be in addition to the
15 Continuing Medical Education ("CME") requirements for renewal of licensure.

16 A prescribing practices course taken after the acts that gave rise to the charges in the
17 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
18 or its designee, be accepted towards the fulfillment of this condition if the course would have
19 been approved by the Board or its designee had the course been taken after the effective date of
20 this Decision.

21 Respondent shall submit a certification of successful completion to the Board or its
22 designee not later than fifteen (15) calendar days after successfully completing the course, or not
23 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

24 If Respondent fails to enroll, participate in, or successfully complete the prescribing
25 practices course within the designated time period, Respondent shall receive a notification from
26 the Board or its designee to cease the practice of medicine within three (3) calendar days after
27 being so notified. Respondent shall not resume the practice of medicine until enrollment or
28 participation in the prescribing practices course has been completed. Failure to successfully

1 prescribing practices course outlined above shall constitute unprofessional conduct and is grounds
2 for further disciplinary action.

3 ACCEPTANCE

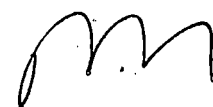
4 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
5 discussed it with my attorney, Peter R. Osinoff. I understand the stipulation and the effect it will
6 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
7 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
8 Decision and Order of the Medical Board of California.

9
10 DATED: 12/20/18


11 ALBERT LAI, M.D.
Respondent

12 I have read and fully discussed with Respondent Albert Lai, M.D. the terms and conditions
13 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
14 its form and content.

15 DATED: 12/20/18


16 PETER R. OSINOFF
Attorney for Respondent

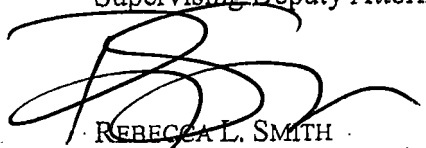
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Medical Board of California.

20
21 Dated: 12/20/18

Respectfully submitted,

22 XAVIER BECERRA
Attorney General of California
23 JUDITH T. ALVARADO
Supervising Deputy Attorney General


24 REBECCA L. SMITH
25 Deputy Attorney General
26 Attorneys for Complainant

27 LA2018600651
53157233.docx
28

Exhibit A

Accusation No. 800-2015-013709

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 RANDALL R. MURPHY
Deputy Attorney General
4 State Bar No. 165851
California Department of Justice
5 300 So. Spring Street, Suite 1702
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7 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 25, 2018
BY: [Signature] ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2015-013709

12 Albert Lai, M.D.
72780 Country Club Dr. No. C300
13 Rancho Mirage, California
92270

ACCUSATION

14 Physician's and Surgeon's Certificate
15 No. A 86192,

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about March 3, 2004, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 86192 to Albert Lai, M.D. (Respondent). The Physician's and Surgeon's
25 Certificate was in full force and effect at all times relevant to the charges brought herein and will
26 expire on March 31, 2020, unless renewed.

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1 “(1) Have his or her license revoked upon order of the board.

2 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
3 order of the board.

4 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
5 order of the board.

6 “(4) Be publicly reprimanded by the board. The public reprimand may include a
7 requirement that the licensee complete relevant educational courses approved by the board.

8 “(5) Have any other action taken in relation to discipline as part of an order of probation, as
9 the board or an administrative law judge may deem proper.

10 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
11 review or advisory conferences, professional competency examinations, continuing education
12 activities, and cost reimbursement associated therewith that are agreed to with the board and
13 successfully completed by the licensee, or other matters made confidential or privileged by
14 existing law, is deemed public, and shall be made available to the public by the board pursuant to
15 Section 803.1.”

16 8. Section 2234 of the Code, states:

17 “The board shall take action against any licensee who is charged with unprofessional
18 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
19 limited to, the following:

20 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
21 violation of, or conspiring to violate any provision of this chapter.

22 “(b) Gross negligence.

23 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
24 omissions. An initial negligent act or omission followed by a separate and distinct departure from
25 the applicable standard of care shall constitute repeated negligent acts.

26 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate
27 for that negligent diagnosis of the patient shall constitute a single negligent act.

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“(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

“(d) Incompetence.

“(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

“(f) Any action or conduct which would have warranted the denial of a certificate.

“(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

“(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.”

FACTS

Patient 1:¹

9. Patient 1 is a 53-year-old male who sustained a significant work related injury on December 12, 1995, resulting in a series of orthopedic surgeries, continuing pain with other complications, and permanent nerve damage in his legs. He first presented to Respondent on July 22, 2011, with complaints of low back pain and bilateral lower extremity pain. He was diagnosed with bilateral sacroiliitis.²

10. Prior to seeing Respondent Patient 1 underwent six surgeries including: December 8, 1995 - Right ankle surgery; February 2, 1996 - Hardware removal surgery; February 19, 1997 -

¹ Patients are identified by number to protect their privacy.

² Sacroiliitis is a condition caused by inflammation within the sacroiliac joint. This joint is located where the base of the spine, known as the sacrum, and the pelvis, known as the ilium, intersect. "Itis" is a Latin term denoting inflammation.

1 Lumbar spine surgery; February 22, 2000 - Lumbar spine surgery; January 28, 2010 - Lumbar
2 spine surgery; June 28, 2011 - Lumbar spine surgery, and; May 11, 2012 - Lumbar spine surgery.
3 Respondent was on pain medications when he presented to Respondent.

4 11. Respondent's initial treatment plan used multiple modalities, including medication
5 management, interventional approaches, and more conservative steps.

6 12. Respondent referred Patient 1 to Dr. N. for a consultation and the placement of a
7 permanent narcotic intrathecal pump³ was recommended. The pump was placed on June 6, 2013.

8 13. Patient 1 reported episodic improvements in pain after placement of the pump, but his
9 pain levels remained severe. Patient 1 began seeing Dr. P, a leading expert on intrathecal pumps,
10 on July 2, 2014, and continued seeing Dr. P. through September 25, 2014, even though he
11 continued to see Respondent.

12 14. Patient 1 continued under Respondent's care while he was still seeing Dr. P.
13 However, after terminating his relationship with Dr. P., Patient 1 continued under the care of
14 Respondent, seeing him monthly for refills for the pump.

15 15. Respondent's notes indicate that he became uncomfortable with certain aspects of
16 Patient 1's pain management protocols, altering the pump medications, and continuing to provide
17 other pain management services. Respondent regularly reprogrammed Patient 1's pump and
18 provided refills approximately monthly, increasing the morphine levels to 60mg/ml over time.

19 16. Despite the fact that Respondent continued to monitor and refill Patient 1's intrathecal
20 pump and increase his morphine levels, Respondent failed to perform toxicology screening or
21 review Controlled Substances Utilization Review and Evaluation System (CURES) reports for
22 Patient 1.

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25
26 ³ An intrathecal pump is a medical device used to deliver medications directly into the
27 space between the spinal cord and the protective sheath surrounding the spinal cord. Medications
28 such as baclofen, morphine, fentanyl or ziconotide may be delivered in this manner to minimize
the side effects often associated with the higher doses used in oral or intravenous delivery of these
drugs.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Gross Negligence)**

3 17. Respondent is subject to disciplinary action under section 2234, subdivision (b) of the
4 Code in that he committed an act of gross negligence. The circumstances are as follows:

5 18. Paragraphs 9 through 16 are incorporated herein by reference as though fully set forth.

6 19. Respondent failed to perform toxicology screening for Patient 1 and failed to review
7 CURES reports for Patient 1, which constitutes gross negligence.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Lack of Knowledge)**

10 20. Respondent is subject to disciplinary action under section 2234, subdivision (d) in
11 that he engaged in unprofessional conduct constituting incompetence. The circumstances are as
12 follows:

13 21. Paragraphs 9 through 16 are included herein by reference.

14 22. Respondent's increased morphine concentration to greater than 30mg/ml indicated a
15 lack of knowledge regarding dosages because such a dosage is associated with formation of a
16 granuloma, although Patient 1 fortunately did not develop this condition.

17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Medical Board of California issue a decision:

20 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 86192,
21 issued to Albert Lai, M.D.;

22 2. Revoking, suspending or denying approval of Albert Lai, M.D.'s authority to
23 supervise physician assistants and advanced practice nurses;

24 3. Ordering Albert Lai, M.D., if placed on probation, to pay the Board the costs of
25 probation monitoring; and

26 ///

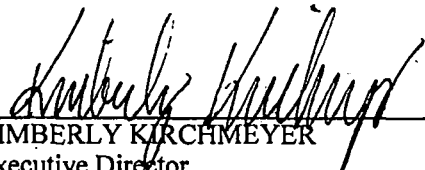
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4. Taking such other and further action as deemed necessary and proper.

DATED: April 25, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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